

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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|--------------------------------|---|----------------------|
| In the Matter of |) | MM Docket No. 96-253 |
| |) | RM-8962 |
| Amendment of Section 73.202(b) |) | |
| Table of Allotments |) | |
| FM Broadcast Stations |) | |
| (Bainbridge, Georgia) |) | |

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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OFFICE OF SECRETARY

REPLY COMMENTS

Chattahoochee Broadcast Associates ("Petitioner"), by its counsel, hereby submits reply comments to the "Comments of Paxson Tallahassee License, Inc." filed on February 10, 1997, by Paxson Tallahassee License, Inc. ("Paxson").

Background

1. On November 22, 1996, Petitioner filed its Petition for Rule Making to allot Channel 270A to Bainbridge, Georgia, as its second local FM service. The Notice of Proposed Rule Making ("NPRM"), 61 FR 67765 (1996) was adopted on December 13, 1996, and released on December 20, 1996. On December 16, 1996, Paxson filed an application for Channel 268C1 at Quincy, Florida, at its preferred site which is short spaced to Petitioner's prior filed

rule making petition by 30.22 km. The Quincy application was filed pursuant to the Report and Order in MM Docket 95-82, 11 FCC Rcd 8772 (1996). The NPRM in this proceeding noted that the proposed Channel 270A at Bainbridge met the reference coordinates for Channel 268C1, Quincy, Florida, established in MM Docket 95-82. The reference coordinates (30° 10' 22" / 84° 26' 52") were those specified by the Quincy licensee in the Quincy rule making proceeding. See paragraph 5 at p. 8775. The effective date of the Quincy rule making was September 16, 1996. Thus, Paxson or its predecessor could have filed an application at anytime on or after September 16, 1996.

Paxson Comments

2. Paxson argues that the NPRM incorrectly relies on a change in site for Quincy Station WXSJ(FM) on Channel 268C1. Rather, Paxson notes that it filed its application for WXSJ's current transmitter site. Paxson asks that the Commission take this filing into account with respect to the proposed Bainbridge allotment.

Discussion

3. The Commission's Rules are clear with respect to conflicts between petitions for rule making and later filed applications. Conflict Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 57 FR 36018 (1992). An application filed after a petition for rule making has been

submitted and prior to the counterproposal deadline in a rule making proceeding will be given comparative consideration under existing precedent. See paragraph 10 and note 18, supra. The Commission's precedent has "generally given preference to the rule making petition over the application because we have presumed that granting a new FM allotment ... serves the public interest, while protecting an applicant's preference for a specific transmitter site specified in an application serves only an applicant's private interest." Citing Andalusia, Alabama, 49 FR 32201 (1984).


4. As a comparative matter, the Commission's allotment priorities^{1/} favor a new primary service such as a second local FM service to Bainbridge over an increase in secondary service such as that proposed by Paxson, although no gain area figures are provided to indicate a gain area. In fact, Paxson made no attempt to demonstrate that its preferred site will provide preferential secondary service to a new primary service at Bainbridge. Thus, on the merits a new FM service at Bainbridge should be favored over the site preference of Paxson for WXSX. See Benton, Arkansas, et al., 3 FCC Rcd 4840 (1988); Hormigueros, Puerto Rico, 7 FCC Rcd 3017 (1992), and numerous other cases.

5. Accordingly, Chattahoochee Broadcast Associates urges the Commission to allot Channel 270A to Bainbridge, Georgia, as its second FM service.

^{1/} Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992).

Respectfully submitted,

CHATTAHOOCHEE BROADCAST ASSOCIATES

By: 
Mark N. Lipp

Mullin, Rhyne and Topel
1225 Connecticut Avenue, N.W., #300
Washington, D.C. 20036

Its Attorney

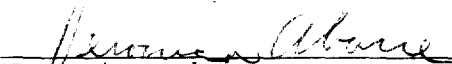
February 25, 1996

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne and Topel, hereby certify that I have on this 25th day of February, 1996, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "REPLY COMMENTS" to the following:

* Ms. Leslie K. Shapiro
Allocations Branch -- Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.--Room 564
Washington, D.C. 20554

John R. Feore, Jr., Esq.
Andrew C. Fish, Esq.
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(Counsel to Paxson Tallahassee License, Inc.)


Veronica Abarre

* Hand Delivered